

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL SOMAHKAWAHHO	:	CIVIL ACTION
	:	
	:	
v.	:	NO. 20-6589
	:	
COUNTY OF PHILADELPHIA, <i>et al.</i>	:	
	:	

ORDER

AND NOW, this 8th day of February, 2021, upon consideration of Michael Somahkawahho's Application to Proceed *In Forma Pauperis* (ECF No. 5), Prisoner Trust Fund Account Statement (ECF No. 6), *pro se* Complaint (ECF No. 1), and Motion to Request Counsel (ECF No. 7), **IT IS HEREBY ORDERED** as follows:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Michael Somahkawahho, #LL-5173, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Superintendent of SCI-Greene or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Somahkawahho's inmate account; or (b) the average monthly balance in Somahkawahho's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Somahkawahho's inmate trust fund account exceeds \$10.00, the Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the

preceding month's income credited to Somahkawahho's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is directed to **SEND** a copy of this Order to the Superintendent of SCI-Greene.

4. The Complaint is **DEEMED** filed.

5. Somahkawahho's Complaint is **DISMISSED IN PART WITH PREJUDICE AND IN PART WITHOUT PREJUDICE** as follows:

a. Somahkawahho's claim for injunctive relief is **DISMISSED WITHOUT PREJUDICE** to him pursuing those claims in a habeas petition.

b. Somahkawahho's claim for damages pertaining to constitutional violations based on his sentencing in 2014 is **DISMISSED WITH PREJUDICE** as time barred.

c. Somahkawahho's claim for damages pertaining to constitutional violations based on his resentencing in 2017 is **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). The dismissal is without prejudice to Somahkawahho filing a new case only in the event his underlying conviction is reversed, vacated, or otherwise invalidated.

6. The Motion to Request Counsel (ECF No. 7) is **DENIED**.

7. The Clerk of Court shall **CLOSE** this case.

BY THE COURT:

/s/ John R. Padova, J.

John R. Padova, J.